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IN THE

Supreme Court of the United States

MARCH TERM, 1964

No. 1042

ZOLA A. ARONSON,

Petitioner,

—against—

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. .....

ZOLA A. ARONSON,

Petitioner,

—against—

JOHN F. MCNEILL, Superintendent of Matteawan State Hospital,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Zola Aronson, the petitioner herein, prays that a writ of certiorari be issued to review the final decree and order of the Court of Appeals, State of New York, dismissing the petitioner's appeal from an order and judgment of the Supreme Court of the State of New York, Appellate Division, Second Department, affirming the dismissal of a writ of habeas corpus brought on in the New York Supreme Court, Dutches County, by petitioner, on behalf of 57 patients confined in Matteawan State Hospital, an institution operated by the New York Department of Correction.

Opinions Below

On February 15, 1962 petitioner obtained a writ of habeas corpus relating to fifty-seven unnamed patients in Matteawan State Hospital. The petition for the writ brought into question the validity of New York Correction Law, Section 412.

After a trial petitioner's writ was dismissed, the trial court, in a decision dated July 24, 1962, holding that Section 412 was constitutional. The order of dismissal was dated March 23, 1962 and entered on October 16, 1962 (not officially reported).

The New York Supreme Court, Appellate Division, Second Department, on appeal, while holding that Correction Law, Section 412, denied equal protection of the laws, affirmed the holding of the trial court by decision dated July 3, 1963. The order of affirmance was entered on July 1, 1963. 19 App. Div. 2d 731, 242 N. Y. S. 2d 427.

An appeal was taken as of right to the Court of Appeals of the State of New York. On motion, dated October 11, 1963, by the Solicitor General, the appeal was dismissed on the ground that petitioner was not a party aggrieved. The decision and order of dismissal was dated November 21, 1963. 13 N. Y. 2d 1043.

Petitioner's motion for reargument was dismissed without opinion by order of the New York Court of Appeals, dated January 9, 1964. 13 N. Y. 2d 1125.

STATUTES INVOLVED IN COURTS BELOW:

New York Correction Law, Section 412:

"Transfers from other state hospitals to Matteawan state hospital

The commissioner of mental hygiene may, by order in writing, transfer to the Matteawan state hospital any insane inmate of another state hospital, who was held under any other than a civil process, committeed thereto upon the order of a court of criminal jurisdiction or of a judge or justice of such a court; or any patient who has previously been sentenced to a term of imprisonment in any correctional institution, and who still manifests criminal tendencies, or any such patient who has previously been an inmate of the Matteawan state hospital. All persons committed to said Matteawan state hospital shall be a charge upon the state."

New York Civil Practice Laws and Rules, Sections 7001, 7002:

"§ 7001. *Application of article; special proceeding*

Except as otherwise prescribed by statute, the provisions of this article are applicable to common law or statutory writs of habeas corpus and common law writs of certiorari to inquire into detention. A proceeding under this article is a special proceeding."

"§ 7002. *Petition*

(a) *By whom made.* A person illegally imprisoned or otherwise restrained in his liberty within the state, or one acting on his behalf, may petition without notice for a writ of habeas corpus to inquire into the cause of such detention and for deliverance. *A judge authorized to issue writs of habeas corpus having evidence, in a judicial proceeding before him, that any person is so detained shall, on his own initiative, issue a writ of habeas corpus for the relief of that person.*" (Emphasis supplied.)

* * * * * *

(c) *Content.* The petition shall be verified and shall state, or shall be accompanied by an affidavit which shall state,

1. that the person in whose behalf the petition is made is detained, naming the person by whom he is detained and the place of detention if they are known, *or describing them if they are not known;* * * *." (Emphasis supplied.)

Mental Hygiene Law, Section 204:

"*Habeas Corpus*

Any one in custody as a mentally ill person, mental defective or epileptic, or in custody as an inebriate pursuant to section two hundred and one, is entitled to a writ of habeas corpus, upon a proper application made by him or some relative or friend in his behalf. * * *"

Jurisdiction

The decision and order of the Court of Appeals of the State of New York was entered on January 9, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3) since a right is claimed under the Fourteenth Amendment to the United States Constitution.

Questions Presented

The Federal questions of substance which have been presented are:

(a) Have these patients, involuntarily confined in a mental hospital, been denied equal protection of the laws and due process by a dismissal of the writ of habeas corpus herein?

(b) May a patient involuntarily confined in a civil mental hospital operated by the New York Department of Mental Hygiene be transferred, pursuant to New York Correction Law, Section 412, to a hospital operated by the New York Department of Correction without a hearing, counsel, or right to confront witnesses against him, without violating the Fourteenth Amendment?

Prior Proceedings in the Federal Courts

Throughout the proceedings in the New York State courts there was continual reference to the case of *Carroll v. McNeill*, 294 Fed. 2d 117, referred to as the *Carroll* case. In that case there was a holding by the U. S. Court of Appeals for the Second Circuit on July 26, 1961, that the provision of Section 412 which is under attack in the instant proceedings was unconstitutional.

Notice of appeal was filed by the Attorney General of the State of New York and certiorari was granted. Thereafter the patient, Carroll, died and the United States Supreme Court, holding the case to be moot, dismissed the appeal and vacated the orders of the lower courts. 369 U. S. 149.

In support of the appeal in the *Carroll* case, the Attorney General of New York filed a "Jurisdictional Statement" in the United States Supreme Court which contained the following statement:

> "The decision of the United States Court of Appeals, holding Correction Law, Section 412 unconstitutional, affects the status of *fifty-seven patients currently at Matteawan State Hospital.*" (Emphasis supplied.)

On the basis of these figures, the Attorney General asserted that a substantial question had been presented to the United States Supreme Court; which merited its attention and review. The same substantial question is presented in this derivative case, which is an outgrowth and, in substance, a continuation of the *Carroll* case.

If the patient Carroll had lived, a decision of the United States Supreme Court would have been determinative of the rights of the 57 patients referred to in the "Jurisdictional Statement" of the Attorney General. The death of Carroll leads to the probability or possibility that the decision of the United States Court of Appeals holding Section 412 unconstitutional is not a precedent, is not *stare decisis*, and is not binding on the Director of Matteawan State Hospital.

If the United States Supreme Court had affirmed in the *Carroll* case, the 57 patients would have been returned to the state hospitals from which they had been transferred. The decision of this petition for certiorari will determine the fate of the 57 patients referred to in the aforesaid "Jurisdictional Statement".

In the *Carroll* case, the United States Court of Appeals, upon comparing the provisions of Correction Law, Section 412 and Mental Hygiene Law, Section 85, said:

> "Had it not been for petitioner's 1934 conviction for robbery, the only way in which petitioner could have been transferred to Matteawan in 1950 was pursuant to New York Mental Hygiene Law, Section 85, the relevant parts of which are set forth in full in the margin.
>
> "Section 85 provides for detailed judicial proceedings leading to a court certification that the mentally ill patient is dangerous and that the safety of the institutional environment requires his transfer to Matteawan. It provides that a commission of three

disinterested persons shall examine the patient and report findings to the court. The patient is entitled to be represented by counsel during the proceedings. However, under New York Correction Law, Section 412, these usual procedural safeguards are denied to a mentally ill patient who has been previously sentenced to a term of imprisonment in a correctional institution, even though the determination that he is mentally ill is made after the completion of his criminal sentence * * *.

"We are of the opinion that the denial of a judicial transfer procedure arbitrarily discriminates against those patients who have fully served prior sentences for crimes and have subsequently been committed by civil process to a state institution of the type of Pilgrim, and denies to this class of patients the equal protection of the laws guaranteed to them by the Fourteenth Amendment * * *.

"* * * After weighing the evidence the district judge concluded that 'Matteawan Hospital is a security institution but it is undoubtedly a hospital and not a jail.' Although we may well have reached a contrary result if the original decision had been ours, we may not set aside this finding of fact based upon all the evidence, for the finding is not a 'clearly erroneous' one (Fed. R. Civ. Proc. 52-a, 28 U. S. C. A.).

"* * * With the exception of those Section 412 transferees initially committed upon civil process to the care of the Department of Mental Hygiene, every patient legally at Matteawan is there pursuant to a court order specifically directing his commitment to the custody of the Department of Correction, or to Matteawan. A court order is even required when it is sought to transfer to Matteawan an incarcerated criminal who has become insane or has been found

to be so while serving an unexpired sentence in a state correctional institution (New York Correction Law, Sec. 408; see People ex rel. Brown v. Johnston, N. Y. C. A., May 4, 1961). Only Section 412 transferees are denied hearings prior to confinement in Matteawan. Lacking such hearings, transferees from ordinary mental hospitals have no opportunity to refute the charges upon which the commissioner of hygiene seeks to justify his orders so committing them. Consequently, it is clear that these transferees are being treated differently from other transferees similarly situated in that they are denied judicial hearings and to that extent are discriminated against.

"* * * a state must guard against classifications which are so arbitrary that they are repugnant to the equal protection clause of the Fourteenth Amendment * * *. The State of New York has not attempted to justify its discrimination under Correction Law Section 412 against ex-convicts * * *. However, patients sought to be transferred under Mental Hygiene Law, Section 85 had been accorded initial judicial commitment hearings, and yet, in order to ascertain whether they are so dangerous that a transfer to the more secure institution of Matteawan is warranted, they are given second judicial hearings prior to being transferred there. The denial to ex-convicts of these second hearings wherein they may be confronted with the evidence demonstrating that they still manifest criminal tendencies and wherein they may put in evidence of contrary purport constitutes a discrimination against them that we are required to hold is an arbitrary one. We have attempted to find a possible reasonable basis for this discrimination and we find none * * *.

"We conclude, therefore, that unless New York Correction Law, Section 412 can be read so that it

requires that a hearing be granted to an ex-convict charged with criminal tendencies prior to his transfer by administrative order from an ordinary state mental hospital to Matteawan, we must hold that Section 412 is unconstitutional as applied to him. We cannot so read the section. Its plain language precludes us from reading into it the requirement that a hearing be held."

The United States Supreme Court has dismissed the appeals in and vacated the decisions and orders of the lower courts in the *Carroll* case. Consequently, as set forth above, it does not stand as a binding precedent. However, petitioner respectfully requests this Court to consider the rationale of the Circuit Court of Appeals in the *Carroll* case. The conclusion it reached is still valid.

Basically the same result as in the *Carroll* case was reached by two judges of the Supreme Court, Dutchess County, in *Re Gomillion*, 29 Misc. 2d 729, 218 N. Y. S. 2d 685, which is referred to herein. One of these judges characterized Section 412 as of doubtful constitutionality. The other held that, by its terms, Section 412 did not authorize transfer to Matteawan of patients held in civil hospitals under civil court orders.

Statement of the Case

The fifty-seven patients involved in this appeal are the same patients referred to on page 6 of this petition. They were transferred from civil mental hospitals operated by the New York State Department of Mental Hygiene to Matteawan State Hospital, operated by the New York State Department of Correction pursuant to the aforesaid Section 412, as set forth on page 3 of this petition.

After a trial in the instant proceeding, the trial court, New York Supreme Court, Dutchess County, found that the statute in question was constitutional and dismissed the petition for a writ of habeas corpus. In the trial court, petitioner filed pre-trial and post trial memoranda of law and during the trial, orally raised the issue of the constitutionality of Correction of Law, Section 412. The trial court judge, in his decision denying the petition, recognized that the constitutional question was before him as follows:

> "Respondent did not submit a return to the writ * * *. On the return day of this writ another writ in a proceeding entitled *People ex rel. Brown v. McNeill* was returnable, which latter writ involved a relator transferred to Matteawan State Hospital from a state hospital by an administrative order pursuant to Section 412 of the Correction Law by reason of the relator's continued manifestation of criminal tendencies.
>
> There was thus the same constitutional issue involved in the *Brown* writ as in the writ at bar. The respondent * * * consented to be bound by the ruling the court might make on the *Brown* writ with respect to the constitutionality of that portion of Section 412 of the Correction Law which provides for administrative transfers to Matteawan of inmates of state hospitals * * *."

On appeal, the New York Supreme Court, Appellate Division, Second Department affirmed the order of the trial court but did so in terms which indicated that the Appellate Division court was convinced of the unconstitutionality of Section 412 and that it regarded that statute as one which denied equal protection of the laws and in all probability also denied due process. Its decision, in part, read as follows:

"The U. S. Court of Appeals for the Second Circuit, in *Carroll* v. *McNeill*, 294 F. 2d 117, 120, stated its rationale as follows: 'We are of the opinion that the denial of a judicial transfer procedure arbitrarily discriminates against those patients who have fully served prior sentences for crimes and have subsequently been admitted by civil process to a state institution of the type of Pilgrim, and denies to this class of patients the equal protection of the law guaranteed to them by the Fourteenth Amendment.' We are in accord with the rationale of the *Carroll* case as thus expressed, *i. e.*: that the failure to furnish a prior hearing to those patients transferred pursuant to administrative order, as provided in that portion of section 412 of the Correction Law here in issue, is arbitrarily discriminatory and constitutes a denial of 'the equal protection of the laws.' It may well be that the denial of a pre-transfer hearing to these patients would also render the statute violative of due process (see *Matter of Coates*, 9 N. Y. 2d 242, 252; *People ex rel. Moyriale* v. *Branham*, 291 N. Y. 313; *Matter of Hecht* v. *Monaghan*, 307 N. Y. 461, 468; and *Wong Yang Sung* v. *McGrath*, 339 U. S. 33, 50)."

Although the Appellate Division court expressed itself as being in accord with the rationale of the *Carroll* case, it nevertheless affirmed the decision of the trial court on the basis of a memorandum decision in *People ex rel. Monaco* v. *McNeill*, 294 N. Y. 605, which had been considered by the United States Court of Appeals in the *Carroll* case and rejected as not being a precedent or if a precedent as not being binding on the Federal courts.

An appeal from the decision and order of the Appellate Division court was taken, as a matter of right, to the New York Court of Appeals. Thereupon the Solicitor General of the State of New York moved to dismiss the appeal on

the ground that the petitioner, Zola A. Aronson, was not a party aggrieved. The motion to dismiss was granted by the Court of Appeals on November 21, 1963, and upon motion for reargument the petitioner's motion to vacate the order of dismissal was denied by a further order of the Court of Appeals dated January 9, 1964.

Reasons for Granting the Writ

It is submitted that the New York State Court of Appeals erred in failing to apply the recognized rule that in actions or proceedings on behalf of infants or incompetents the requirement of "aggrieved person" is not necessary to sustain an appeal.

No doubt the rule that only a party aggrieved may appeal is a salutary one. But the statutes regulating appeals do not define the term "party aggrieved". No general rule can be crystalized out of the decisions on the subject.

COHEN & KARGER:

"POWERS OF THE NEW YORK COURT OF APPEALS," p. 391

It is significant that there is not a word in the discussion of the applicability of the doctrine to habeas corpus proceedings. It is clear that it is not there discussed because the doctrine of "party aggrieved" has never heretofore been deemed to apply to habeas corpus proceedings.

To the contrary, while it is "a good general working rule that only parties to the litigation can be aggrieved by its determination, or have standing to appeal * * * that is not the invariable rule. In several situations persons who were not parties have been permitted to appeal from decisions which directly affected their interests".

COHEN & KARGER (*supra*) Page 399

Under our system of jurisprudence it cannot be argued that petitioner was a person without interest. The proceeding itself is one brought by petitioner as relator on behalf of the State of New York, which clearly has an interest in preventing the unlawful detention of its citizens and residents. It cannot be argued that petitioner has any the less interest than the State of New York, since he is one of the "people" on whose behalf the proceeding was instituted.

The patient Carroll was released as a result of the decision in the *Carroll v. McNeill* case. A patient, Clarence Gomillion, was released from Matteawan State Hospital as a result of a proceeding instituted by petitioner's attorney involving the validity and application of Section 412. Gomillion, upon the order of the trial court in his case, was returned from Matteawan to Hudson River State Hospital. The patient, Brown, the petitioner in *People ex rel. Brown v. McNeill*, which case was tried jointly with the instant case, has also been re-transferred to a civil mental hospital.

But there still are approximately fifty-seven patients in Matteawan who were transferred there without a hearing or counsel under Section 412, a law which the United States Court of Appeals has held to be unconstitutional and which the Appellate Division of the Supreme Court, Second Department, unanimously has stated denies equal protection of the laws and probably due process.

The New York Civil Practice Laws and Rules, Section 7002, and New York Mental Hygiene Law, Section 204, expressly permit a person acting as "next friend" to come to the aid of a person or persons unknown (see page 4 of this petition). *Even if the New York statutes did not so provide, it is clear that the mentally ill, under the Fourteenth Amendment to the Federal Constitution, would be entitled to habeas corpus proceedings, initiated when necessary by persons who are not technically parties aggrieved. The application of the*

party aggrieved concept would necessarily deprive the mentally ill of their access to Court, to due process, and to equal protection of the laws if "next friends" were not permitted to initiate proceedings on their behalf.

In *Fay v. Noia* (3 48 63), 372 U. S. 391, the U. S. Supreme Court stated that the basic principle of the Great Writ of habeas corpus is that, in a civilized society, government must always be accountable to the judiciary for a man's imprisonment. If the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release.

Reviewing the history of habeas corpus, Judge Brennan stated that when the Suspension Clause, Art. I, ⁋9, Cl. 2, was written into the Federal Constitution and the first Judiciary Act was passed conferring habeas corpus jurisdiction upon the federal judiciary, there was respectable common-law authority for the proposition that habeas corpus was available to remedy any kind of governmental restraint contrary to the fundamental law; and it would appear that the Constitution invites, if it does not compel, a generous construction of the power of the federal courts to dispense the writ conformably with common-law practice. His decision further held that Federal Courts have *power* under the Federal habeas corpus statute to grant relief, despite the applicant's failure to have pursued a state remedy not available to him at the time he applied and that due process denied in the state proceedings leading to a conviction is not restored just because a state court declines to adjudicate on the merits the claim of such denial.

Judge Brennan further said, beginning at p. 399:

> "We do well to bear in mind the extraordinary prestige of the Great Writ * * * in Anglo-American jurisprudence. * * * It is the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all

> cases of illegal restraint or confinement. * * * Only two terms ago this Court had occasion to reaffirm the high place of the writ in our jurisprudence. We repeat what has been so truly said of the federal writ; there is no higher duty than to maintain it unimpaired—and unsuspended, save only in the cases specified in our Constitution. * * * These are not extravagant expressions. Behind them may be discerned the unceasing conflict between personal liberty and government oppression. * * * Although in form the Great Writ is simply a mode procedure, its history is inextricably intertwined with the growth of fundamental rights of personal liberty. * * * The principle that judicial as well as executive restraints may be intolerable received dramatic expression in Bushell's Case, Vaughan, 135, 124 Eng. Rep. 1006, 6 Howell's State Trials 999 (1670). * * * It is of the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void."

Obviously the duty to maintain the writ of habeas corpus unimpaired applies to the Appellate State Courts as well as to the Federal courts.

U. S. Code, Section 2242, provides that an application for a writ of habeas corpus may be sought by a person aggrieved or "by someone acting in his behalf". This is the *next friend* doctrine. Pursuant to it, the Circuit Court of Appeals, in holding a next friend might petition for habeas corpus, said:

> "With reference to the jurisdiction of this Court, we are first met by the claim that Eaton, as next friend, could not take this appeal. * * * In favor of liberty, we think we ought to receive the appeal and admit the *prochein ami*. * * * It is intended that all proceedings in the circuit court may be challenged

on appeal in habeas corpus cases. * * * (The) aid of a *prochein ami*, in cases of this character, including appeals, is necessary for the protection of those who, on account * * * of their mental inability are incapable of acting for themselves. * * * Wherever a proceeding is commenced by *prochein ami*, the presumption that it was properly so commenced stands until rebutted. * * * *"*

King v. *McLean Asylum*, 64 Fed. 325, C.C.A. (1st Cir. 1894).

The Circuit Court of Appeals (2nd Cir.) again enunciated this point of view in holding:

"The practice of a next friend applying for a writ is ancient and fully accepted. There are many instances and circumstances under which it may not be possible nor feasible that the detained person shall sign and verify the complaint. * * * Impossibility of access to the person, or mental incapacity, are all illustrations of a proper use of the 'next friend' application. * * * It was not intended that the writ of habeas corpus should be availed of, as a matter of course, by intruders or uninvited meddlers. * * * *"*

U. S. ex rel. Bryant v. *Houston*, 273 Fed. 915 (2nd Cir. 1921).

Are petitioner and his attorney intruders or uninvited meddlers?

Petitioner's attorney, upon motion, was authorized by the U. S. Court of Appeals to participate in the argument of the *Carroll* case (*supra*) as *amicus curiae*. The Attorney General of the State of New York furnished him with the pleading (jurisdictional statement) in which the plight of the fifty-seven here involved was set forth. Together, petitioner and his attorney have attempted, in this case, to implement the decision of the U. S. Court of Appeals in

the "*Carroll*" case—a case which became moot when Carroll died while the appeal by the Attorney General was pending in the United States Supreme Court.

Will the Judiciary, which has called upon the bar to come to the aid of the needy, now hold petitioner and his attorney to be meddlers because they responded to that call?

The legal protection of the mentally ill in cases like this should not be left to chance. Too many families have acted toward their mentally ill on the basis of "out of sight, out of mind". *Such patients without families or friends would be discarded* on a "judicial scrap heap" if the doctrine of "non-aggrieved party" were applied to the representatives of organizations which are dedicated to the protection of the mentally ill and to the establishment of their rights.

7

Conclusion and Summary of Argument Relating to the Constitutionality of New York State Correction Law, Section 412

As indicated herein, although its decision was later vacated for mootness, the U. S. Court of Appeals in the case of *Carroll* v. *McNeill*, 294 Fed. 2d 117 has held that Correction Law, Section 412, is unconstitutional. The arguments and reasoning of the U. S. Court of Appeals in holding Section 412 unconstitutional are hereby incorporated by reference. Also, in the instant case, the Supreme Court of the State of New York, Appellate Division, Second Department, while not holding that Section 412 is unconstitutional did hold that it denies equal protection of the laws, and possibly due process of law. In the *Gomillion* case, referred to herein, in the Supreme Court of the State of New York, Albany County, two different judges questioned the propriety of transferring a patient from a civil mental hospital to Matteawan State Hospital under Section 412.

One of them implied that Section 412 was unconstitutional. The other directed that the patient be returned to Hudson River State Hospital on the ground that the order issued under Section 412, transferring him to Matteawan, was invalid.

In amplification of the foregoing, petitioner submits that Section 412 is unconstitutional for the following reasons:

1. It denies equal protection of the laws, in that it is an improper classification statute.
2. It denies due process of law in permitting confinement of non-criminal persons in a correctional institution without a hearing, counsel or right to confront witnesses.
3. It denies due process and equal protection of the laws, in that it creates an improper evidentiary presumption of law.
4. It is void as being vague.
5. It places persons convicted of crime in double jeopardy.
6. It acts as a bill of attainder.
7. It exposes patients to arbitrary and capricious orders of administrative officers.
8. It results in imprisonment in a jail without due process of law of persons certified to state hospitals for care and treatment, so that such imprisoned persons receive inadequate care and treatment.

In addition to the unconstitutionality of Section 412 petitioner contends that the order of the trial court (Supreme Court of the State of New York, Dutchess County) in and of itself denies equal protection of the laws, and, therefore, the orders of the Appellate Division and the Court of Appeals affirming the order in and of themselves deny equal protection of the laws.

As set forth above, the trial court had before it two proceedings, jointly tried. One was entitled *People ex rel. Brown v. McVeill*, Proceeding No. 1, and the other *People ex rel. Aronson v. McVeill*, Proceeding No. 2.

In Proceeding No. 1, the trial court directed a hearing to determine whether the patient Brown had manfested criminal tendencies before his transfer to Matteawan. With the same issues of law and fact before the same court in Proceeding No. 2, which is now involved in this petition for a writ of certiorari, the trial court judge denied the petition for a writ of habeas corpus. It is obvious that the two different decisions constitute a denial of equal protection of the laws.

In view of these considerations, I respectfully submit that this petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID N. FIELDS,
Attorney for Petitioner.

April 8, 1964.

Proof of Service

I, DAVID N. FIELDS, attorney for Zola A. Aronson, the petitioner herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 7th day of April, I served one copy of the foregoing Petition for Certiorari upon the Attorney for the State of New York, Louis Lefkowitz, Attorney General State Capitol, Albany, New York, by certified mail in a duly addressed envelope, with postage prepaid.

DAVID N. FIELDS,
Attorney for Zola A. Aronson, Petitioner.

Petition for Writ

SUPREME COURT
OF THE STATE OF NEW YORK

DUTCHESS COUNTY

PEOPLE . . . ex rel. ARONSON,
Relator-Appellant,

—against—

SUPERINTENDENT OF MATTEAWAN STATE HOSPITAL . . .
Respondent.

TO JOHN F. MCNEILL, SUPERINTENDENT OF
MATTEAWAN STATE HOSPITAL

The Petition of Zola A. Aronson shows that fifty-seven persons (the said persons restrained being persons whose names are unknown); the said persons being the fifty-seven persons referred to by Louis J. Lefkowitz, Attorney General of the State of New York on Page 7 of his 'Jurisdictional Statement' filed in the Supreme Court of the United States in support of an appeal from the judgment of the United States Court of Appeals for the Second Circuit, entered on July 26, 1961, in an action entitled McNeill, etc. v. John J. Carroll, holding New York State Correction Law, Section 412 unconstitutional; the said page 7 reads in part as follows:

> 'The decision of the United States Court of Appeals, holding Correction Law §412 unconstitutional, affects the status of fifty-seven patients currently at Matteawan State Hospital.'

and that they are not committed or detained by virtue of any process or mandate issued by any Court of the United

States, or by any Judge thereof; nor are they committed or detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction, or the final order of such a tribunal made in a special proceeding instituted for any cause except to punish them for contempt; nor by virtue of an execution or other process issued upon such a judgment, decree or final order. The cause or pretense of the restraint, according to the best of the knowledge and belief of your Petitioner, is that such persons, having at one time been convicted of a crime and having thereafter been certified to state hospitals operated and maintained by the New York State Department of Mental Hygiene, were subsequently transferred to Matteawan State Hospital pursuant to New York State Correction Law, Section 412. That the detention of such persons in Matteawan State Hospital is illegal by reason of the fact that said Section 412 denies equal protection of the laws and is unconstitutional, being violative of both the United States and New York State Constitutions.

No previous application has been made for this relief.

Wherefore your Petitioner prays that a writ of habeas corpus issue directed to said John J. McNeill, commanding him to produce the said fifty-seven persons before a justice of the Supreme Court, Dutchess County, on Friday, March 23, 1962, at a Special Term of said court.

Dated the 14th day of February, 1962.

ZOLA A. ARONSON,
Petitioner.

(Verified on the 15th day of February, 1962.)

Decision of New York Supreme Court, Dutchess County

Opinion by Hoyt, J.

SUPREME COURT
OF THE STATE OF NEW YORK

DUTCHESS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK
on the relation of ZOLA A. ARONSON,

—against—

JOHN F. McNEILL, Superintendent of Matteawan
State Hospital,

Respondent.

HOYT, *J.*:

Relator has been granted a writ of habeas corpus upon which he seeks the release of fifty-seven persons whose names are unknown and who are presently confined at Matteawan State Hospital. These fifty-seven persons are those persons referred to by the Attorney General of the State of New York on page 7 of his "Jurisdictional Statement" filed in the Supreme Court of the United States in support of an appeal from the decision of the United States Court of Appeals for the Second Circuit in an action entitled United States of America ex rel. John J. Carroll v. John F. McNeill, Superintendent of Matteawan State Hospital (294 F. 2d 117).

Relator alleges in his petition that these fifty-seven persons, having at one time been convicted of a crime and having thereafter been certified to state hospitals operated and maintained by the Department of Mental Hygiene, were subsequently transferred to Matteawan State Hospital pursuant to Section 412 of the Correction Law. Relator seeks

the release of these fifty-seven persons upon the ground that the detention of these persons at Matteawan is illegal by reason of the fact that Section 412 denies equal protection of the laws and is unconstitutional, being violative of both the United States and New York State Constitutions.

Respondent did not submit a return to this writ but instead moved to dismiss the petition and vacate the writ on the ground that the petition was not verified, that there was insufficient identity of the persons in whose behalf the writ was issued, that the respondent could not comply with the mandate to make a return and indicate if the petitioners were in custody and if so to produce them, since respondent could not identify the persons for whom the writ was issued.

On the return day of this writ another writ in a proceeding entitled People ex rel. Brown v. McNeill was returnable, which latter writ involved a relator transferred to Matteawan State Hospital from a state hospital by an administrative order pursuant to Section 412 of the Correction Law by reason of the relator's continued manifestation of criminal tendencies.

There was thus the same constitutional issue involved in the Brown writ as in the writ at bar. The respondent, thereupon, agreed to withdraw his motion to vacate the writ upon the grounds above stated and consented to be bound by the ruling the court might make on the Brown writ with respect to the constitutionality of that portion of Section 412 of the Correction Law which provides for administrative transfers to Matteawan of inmates of state hospitals previously sentenced to a correctional institution and who still manifest criminal tendencies.

The decision has been rendered in the case of People ex rel. Brown v. McNeill, dated July 23, 1962, holding Section 412 of the Correction Law constitutional.

Decision of New York Supreme Court, Dutchess County

The petition herein is thus denied and the proceeding dismissed.

Submit order on notice.

CLARE J. HOYT,
Justice Supreme Court.

Dated: Newburgh, New York,
July 24, 1962.

To:

DAVID N. FIELDS, ESQ.
Attorney for Relator
36 West 44th Street
New York 36, New York

HON. LOUIS J. LEFKOWITZ
Attorney General
(Manuel T. Murcia, of Counsel)
Attorney for Respondent
Albany, New York

BURTON H. HALL, ESQ
Attorney for Amicus Curiae
Workers Defense League
120 Liberty Street
New York 6, N. Y.

Order of New York Supreme Court, Dutchess County

Order Appealed From

At a Special Term of the Supreme Court held in and for the County of Dutchess, State of New York, held at Poughkeepsie, New York on the 23rd day of March, 1962.

Present: HON. CLARE J. HOYT,
Justice of the Supreme Court.

[SAME TITLE]

An application having been made by the Relator, and a writ of habeas corpus having issued returnable in this Court on March 23, 1962, and the matter having regularly come on for hearing before the undersigned on March 23, 1962 at the Courthouse at Poughkeepsie, New York and the matter having been duly heard and testimony taken,

Now, on reading and filing of the petition of the Relator, the affidavit of Manuel T. Murcia, Assistant Attorney General, sworn to on March 12, 1962, the affidavit of Dr. Solon C. Wolff, sworn to on March 16, 1962, the deposition of Dr. Robert C. Hunt, director of Hudson River State Hospital taken on April 5, 1962 and the deposition of Dr. Solon C. Wolff, acting superintendent of Matteawan State Hospital taken on April 5, 1962, after hearing David N. Fields, Esq., attorney for the Relator in support of the application and Louis J. Lefkowitz, Esq., Attorney General of the State of New York, attorney for respondent, by Isadore Siegel, Esq., Assistant Attorney General, of counsel, in opposition thereto, and the Court having given due consideration to the proof and evidence submitted and due deliberation having having been had thereon, and the Court having rendered its decision with respect to the constitutional question, find

ing that Section 412 of the Correction Law of the State of New York is constitutional and authorizes a proper exercise of an administrative function, which decision further denied Relator's petition and directed that the proceeding herein be dismissed, it is

ORDERED, that the Court finds Section 412 of the Correction Law of the State of New York constitutional in that it authorizes the proper exercise of an administrative function, and it is further

ORDERED, that the petition of the Relator herein is denied and the writ of habeas corpus is dismissed.

Dated: Newburgh, N. Y.,
Oct. 16, 1962.

Enter in Dutchess County,

/s CLARE J. HOYT,
J. S. C.

Decision of New York Supreme Court, Appellate Division

Opinion by Appellate Division

(N. Y. L. J., July 3, 1963.)

[SAME TITLE]

In a habeas corpus proceeding instituted by relator, an attorney, on behalf of fifty-seven patients of Matteawan State Hospital, the relator appeals from an order of the Supreme Court, Dutchess County, entered October 16, 1962, which dismissed the writ upon the basis of the decision rendered in a companion case (People ex rel. Brown v. McNeil, 35 Misc. 2d 53). By stipulation the parties had agreed to be bound by the court's decision in the companion case. In that decision the court held section 412 of the Correction Law to be constitutional. Order affirmed. The sole question here presented involves the constitutionality of that portion of section 412 of the Correction Law, which provides for the transfer to Matteawan State Hospital, upon the written order of the commissioner of mental hygiene, of any patient of a state hospital "who has previously been sentenced to a term of imprisonment in any correctional institution, and who still manifests criminal tendencies." The case at bar is an outgrowth of a case decided in the United States Court of Appeals for the Second Circuit (U. S. ex rel. Carroll v. McNeill, 294 F. 2d 117), wherein the section was held to be unconstitutional. In the Carroll case, certiorari was granted by the United States Supreme Court (368 U. S. 951), but during the pendency of the appeal the relator Carroll died and the Supreme Court dismissed the appeal as moot, (369 U. S. 149). In support of his appeal to the Supreme Court, however, the Attorney General of the State of New York had filed a "Jurisdictional Statement" which declared that the decision of the United States Court of Appeals in Carroll (holding said section 412 of the Correction Law, to be unconstitu

tional) affected the status of fifty-seven patients currently at Matteawan State Hospital. Thereupon, the instant relator, an attorney, instituted the present proceeding on behalf of those fifty-seven patients. The language in section 85 of the Mental Hygiene Law, which differs from that contained in section 412 of the Correction Law, has been construed to mean that a patient who has not been previously sentenced to a correctional institution, but who is presently confined in a state mental institution, is entitled to the protection of a court certification (to be made after certain detailed judicial proceedings) that he "has committed or is liable to commit an act or acts which if committed by a sane person would constitute homicide or felonious assault, or is so dangerously mentally ill that his presence in such a hospital is dangerous to the safety of other patients therein." In the Carroll case (supra) the Federal Court of Appeals held that the denial of the judicial transfer-procedures to patients who have been previously sentenced to a correctional institution was unconstitutional. The court stated its rationale as follows (294 F. 2d 117, 120): "We are of the opinion that the denial of a judicial transfer procedure arbitrarily discriminates against those patients who have fully served prior sentences for crimes and have subsequently been admitted by civil process to a state institution of the type of Pilgrim, and denies to this class of patients the equal protection of the law guaranteed to them by the Fourteenth Amendment." We are in accord with the rationale of the Carroll case as thus expressed, i. e.: that the failure to furnish a prior hearing to those patients transferred pursuant to administrative order, as provided in that portion of section 412 of the Correction Law here in issue, is arbitrarily discriminatory and constitutes a denial of "the equal protection of the laws." It may well be that the denial of a pre-transfer hearing to these patients would also render the statute violative of due

process (see Matter of Coates, 9 N. Y. 2d 242, 252; People ex rel. Morriale v. Branham, 291 N. Y. 312; Matter of Hecht v. Monaghan, 307 N. Y. 461, 468; and Wong Yang Sung v. McGrath, 339 U. S. 33, 50). Nevertheless, we are constrained to affirm the order here reviewed on the authority of People ex rel. Monaco v. McNeill (299 N. Y. 605). In the Monaco case, the question of the unconstitutionality of section 412 was specifically raised and rejected by the Court of Appeals of this state. In our opinion, despite contrary comments in Carroll, the Monaco case is *not* distinguishable from the case at bar; it is determinative of the constitutional issue involved herein; and it must be deemed to be controlling. Under all the circumstances, an affirmance of the order dismissing the instant writ is compelled by the views adopted by the New York Court of Appeals in **Monaco**.

Order of New York Supreme Court, Appellate Division

Order on Appeal From Order

At a Term of the Appellate Division of the Supreme Court of the State of New York, held in and for the Second Judicial Department at the Borough of Brooklyn, on the 1st day of July, 1963.

Present—HON. GEORGE J. BELDOCK,
Presiding Justice,
" HENRY L. UGHETTA,
" L. BARRON HILL,
" SAMUEL RABIN,
" JAMES D. HOPKINS,
Justices.

Order of New York Supreme Court, Appellate Division

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. ZOLA A. ARONSON,
Relator-Appellant,

—*v.*—

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,
Respondent.

The above named Zola A. Aronson, the relator in this proceeding having appealed to the Appellate Division of the Supreme Court from an order of the Supreme Court entered in the office of the Clerk of the County of Dutchess on the 16th day of October, 1962, which dismissed the writ of habeas corpus upon the basis of the decision rendered in a companion case (People ex rel. Brown v. McNeil, 35 Misc. 2d 53), herein, and the said appeal having been argued by Mr. David N. Fields, of Counsel for the appellant and argued by Mr. Stephen N. Rubin, Deputy Assistant Attorney General, of Counsel for the respondent, and due deliberation having been had thereon; and upon the opinion and decision slip of the court herein, heretofore filed; and made a part hereof:

It is Ordered that the order so appealed from be and the same hereby is unanimously affirmed.

Enter:

/s/ JOHN J. CALLAHAN,
Clerk

Decision of Court of Appeals

November 21, 1963

STATE OF NEW YORK

IN COURT OF APPEALS

(Mo. No. 775)

THE PEOPLE &c. ex rel. ZOLA A. ARONSON,

Appellant.

—vs.—

JOHN F. McNEIL, as Superintendent of Matteawan State Hospital,

Respondent.

Motion to dismiss the appeal granted, and the appeal dismissed upon the ground that the appellant is not a party aggrieved.

Order of Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Twenty-first day of November A.D. 1963.

Present, HON. CHARLES S. DESMOND,
Chief Judge, presiding.

(Mo. No. 775)

THE PEOPLE &c. ex rel. ZOLA A. ARONSON,
Appellant,

—*vs.*—

JOHN F. MCNEILL, as Superintendent of Matteawan State Hospital,
Respondent.

A motion having heretofore been made herein upon the part of the respondent to dismiss the appeal taken by the appellant in the above cause to this Court and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted and the appeal dismissed upon the ground that the appellant is not a party aggrieved.

GEARON KIMBALL
Deputy Clerk

(Seal)

Decision of Court of Appeals

January 29, 1964

STATE OF NEW YORK

IN COURT OF APPEALS

(Mo. No. 9)

THE PEOPLE &c, ex rel. ZOLA A. ARONSON,

Appellant,

—*vs.*—

JOHN E. McNEILL, as Superintendent of Matteawan State Hospital,

Respondent.

Motion to vacate the order of this Court, dated November 21, 1963, dismissing the appeal herein denied.

Order of Court of Appeals

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the Ninth day of January A. D. 1964.

Present, HON. CHARLES S. DESMOND,
Chief Judge, presiding.

(Mo. No. 9)

THE PEOPLE &c. ex rel. ZOLA A. ARONSON,
Appellant,

—*vs.*—

JOHN F. McNEILL, as Superintendent of Matteawan State Hospital,
Respondent.

A motion having heretofore been made herein upon the part of the appellant to vacate the order of this Court, dated November 24, 1963, dismissing the appeal, and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

GEARON KIMBALL
Deputy Clerk

(Seal)

Office-Supreme Court, U.S.
FILED
MAY 18 1964
JOHN F. DAVIS, CLERK

(1991)

Supreme Court of the United States

No. 1042—October Term, 1963

ZOLA A. ARONSON,

Petitioner,

vs.

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Respondent.

ON PETITION FOR CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LOUIS J. LEFKOWITZ
Attorney General of the State of New York
Attorney for Respondent
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PAXTON BLAIR
Solicitor General

JOSEPH J. ROSE
Assistant Attorney General
of Counsel

BALLOU PRESS, LAW PRINTERS
BUFFALO, N. Y.

Supreme Court of the United States

No. 1042—October Term, 1963

ZOLA A. ARONSON,

Petitioner,

vs.

JOHN F. McNEILL, Superintendent of Matteawan State Hospital,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Statement

Petitioner seeks a writ of certiorari to review an order of the New York Court of Appeals, entered November 21, 1963, dismissing an appeal from an order of the Appellate Division, Second Department, entered July 1, 1963, unanimously affirming an order of the Supreme Court, Dutchess County (Hoyt, J.), entered October 16, 1962, dismissing a petition for a writ of *habeas corpus*.

Reported below: 13 N. Y. 2d 1043.

Facts

The petitioner herein, Zola A. Aronson, is an attorney, maintaining a law office in New York City. He was not, at the time of the commencement of this proceeding, nor is now, a patient at the Matteawan State Hospital. David

N. Fields, his counsel herein, is in fact the petitioner's law partner, in the firm of Fields, Merritt & Aronson, 36 West 44th Street, New York City. Concededly, neither Mr. Aronson nor Mr. Fields has ever been retained by any of the 57 patients referred to in the *habeas corpus* petition, nor have they been retained by any of the families of these patients.

The *habeas corpus* petition, verified by Mr. Aronson on February 14, 1962, presented not one issue of fact. Its sole purpose was to challenge the constitutionality of New York Correction Law, § 412, which authorizes transfers of certain patients from other state hospitals to the Matteawan State Hospital. The petition alleged that fifty-seven persons were being held in Matteawan pursuant to the provisions of § 412. The petition conceded, however, that the names of these persons were unknown — "the said persons restrained being persons whose names are unknown" — to the relator. Nor did the petition allege that either the petitioner or his counsel had been retained to represent even one of these patients.

The reference to fifty-seven patients apparently came about in the following way. In 1960, in an entirely separate and unrelated federal proceeding, one John J. Carroll obtained a writ of *habeas corpus* in a United States District Court, to contest the constitutionality of § 442 of the Correction Law, pursuant to which he had been transferred to Matteawan from the Pilgrim State Hospital.

On April 15, 1960, the United States District Court for the Southern District of New York, after a hearing, dismissed the writ, on the merits. The Court found that, aside from some additional security measures taken at Matteawan Hospital, the treatment accorded patients there and the record of cures effected there was the same as in other state hospitals. It concluded that Matteawan was

undoubtedly a hospital and not a jail, and that the selection of Matteawan as the hospital appropriate for Carroll's treatment was a purely professional administrative matter for decision by the Commissioner of Mental Hygiene, not requiring notice and hearing.

On appeal, the United States Court of Appeals for the Second Circuit reversed, holding that Correction Law § 412 violated the equal protection clause of the United States Constitution. Although the Court refused to set aside the District Court's finding that Matteawan Hospital was a hospital and not a jail, it held that the equal protection clause required that appellee should have been accorded a hearing on his transfer from Pilgrim State Hospital to Matteawan State Hospital, since Mental Hygiene Law § 85 provided for a hearing in the case of other patients under civil process. The Court ordered that the patient be transferred back to Pilgrim State Hospital. *U. S. ex rel. Carroll v. McNeill*, 294 F. 2d 117.

Thereupon, the Superintendent of the Matteawan State Hospital filed a Notice of Appeal to the Supreme Court of the United States together with the requisite Jurisdictional Statement. It was noted in that Statement that the decision of the United States Court of Appeals affected the status of fifty-seven patients then in Matteawan, having been transferred there pursuant to Correction Law, § 412.

On January 8, 1962 this Court noted probable jurisdiction (368 U. S. 951) but two weeks later, Carroll died. Counsel for appellee Carroll then filed a memorandum, suggesting that the cause was moot and the Superintendent's *appeal* be dismissed. The Superintendent then moved to vacate the judgment of the United States Court of Appeals and to remand the cause to the District Court, with directions to dismiss the cause as moot. The judgment of the

Circuit Court was vacated and the District Court instructed to dismiss the cause as moot. *McNeill* v. *Carroll*, 369 U. S. 149 (1962).

The petitioner in this instant matter, apparently interested in the question of the constitutionality of § 412, obviously read our (1961) Jurisdictional Statement in the *Carroll* case and noted the reference therein to fifty-seven patients then confined in Matteawan pursuant to that section. By means of a writ of *habeas corpus*, he has attempted to test the constitutionality of § 412, in their behalf, although not retained by any of these patients, admittedly not knowing any of them not himself a patient.

A writ of *habeas corpus* was granted on February 19, 1962, directing that on March 27, 1962, the respondent produce the fifty-seven persons referred to in our Jurisdictional Statement. The respondent did not submit a Return to this writ but, instead, moved in the Supreme Court, Dutchess County, for an order dismissing the petition and vacating the writ, upon the ground that the Petition did not conform to the provisions of Civil Practice Act § 1234 and upon the further ground that the relator apparently did not actually represent any of these patients.

None of these fifty-seven patients was produced in Court. No Return to the writ was ever filed or served, and no question of fact was ever raised or determined. What happened on the return day of the writ is perhaps best described in the opinion of Mr. Justice Hoyt (in the instant matter) in the Supreme Court, Dutchess County:

> "On the return day of this [Aronson] writ another writ in a proceeding entitled *People ex rel. Brown* v. *McNeill* was returnable, which latter writ involved a relator transferred to Matteawan State Hospital from a state hospital by an administrative order pursuant to Section 412 of the Correction Law by reason of the

relator's continued manifestation of criminal tendencies.

"There was thus the same constitutional issue involved in the Brown writ as in the writ at bar. The respondent, thereupon, agreed to withdraw his motion to vacate the writ upon the grounds above stated and consented to be bound by the ruling the court might make on the Brown writ with respect to the constitutionality of that portion of Section 412 of the Correction Law which provides for administrative transfers to Matteawan of inmates of state hospitals previously sentenced to a correctional institution, and who still manifest criminal tendencies.

"The decision has been rendered in the case of *People ex rel. Brown v. McNeill*, dated July 23, 1962 [35 Misc. 2d 53], holding Section 412 of the Correction Law constitutional.

"The petition herein is thus denied and the proceeding dismissed."

It appears that neither Mr. Aronson nor Mr. Fields represented Joseph Brown in his *habeas corpus* proceeding. Brown's petition was drawn in his own hand; the opinion of Mr. Justice Hoyt in that matter, states that Brown appeared *pro se* and testified in his own behalf. As noted, the Court in the *Brown* proceeding held 412 to be constitutional, but directed that a further hearing be had with respect to the basis for Brown's transfer to Matteawan. Brown was transferred from Matteawan to Rockland State Hospital in July of 1962, as an administrative matter, and the order directing a further hearing in his proceeding thus became moot.

An order dismissing the writ of *habeas corpus* in the instant proceeding was entered in the Dutchess County Clerk's Office on October 16, 1962. The petitioner then appealed to the Appellate Division, Second Department, which unanimously affirmed, with opinion. 19 A.D.2d 751 (1963).

Petitioner then appealed to the New York Court of Appeals, as a matter of right, upon the assertion that a constitutional question was involved. On respondent's motion, that Court, by an Order entered November 21, 1963, dismissed the appeal on the ground that petitioner was not a party aggrieved. 13 N. Y. 2d 1043. Petitioner's subsequent motion to vacate that Order and for leave to reargue was denied by an order entered January 9, 1964. 13 N. Y. 2d 1125.

ARGUMENT

Petitioner cannot invoke the jurisdiction of this Court to vindicate the right of a third party.

"The party seeking review of a state court decision 'must show that enforcement of the challenged judgment would deprive it—not another—of some right arising under the Constitution or laws of the United States properly asserted below.' *Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op.*, 276 U. S. 71, 88. In other words, 'a person cannot invoke the jurisdiction of this Court to vindicate the right of a third party.' *Hanson v. Denckla*, 357 U. S. 235, 244; *Barrows v. Jackson*, 346 U. S. 249, 255-9, and cases cited therein; *Joint Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 151-4 (Frankfurter, J., concurring)." Stern and Gressman, Supreme Court Practice (3rd ed.), 335; see also Robertson and Kirkham, Jurisdiction of the Supreme Court (1951 ed.), 329.

Petitioner now argues that he is an appropriate representative of the patients referred to.

The proper test of whether petitioner is an appropriate representative appears to be whether the patients involved have an effective way to assert their constitutional rights.

Barrows v. Jackson, *supra*, 346 U. S. 249, 257 (1953); *N. A. A. C. P. v. Alabama*, 357 U. S. 449, 459-460 (1958); *McGowan v. Maryland*, 366 U. S. 420, 429 (1961); *Tileston v. Ullman*, 318 U. S. 44, 46 (1943); *Poe v. Ullman*, 367 U. S. 497 (1961). It is a matter of record that these patients do have effective legal redress and that they have asserted their remedies even without counsel. *McNeill v. Carroll*, *supra*, 369 U. S. 149 (1962); *In Re Gamillion*, 29 Misc. 2d 729 (Dutchess County Supreme Court, 1962); *People ex rel. Brown v. McNeill*, 35 Misc. 2d 53 (Dutchess County Supreme Court, 1962). We submit that petitioner is not an appropriate representative of the patients involved here, and that their constitutional rights can be effectively vindicated without his intervention.

CONCLUSION

The petition for certiorari should be denied.

Dated: May 6, 1964.

Respectfully submitted:

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